

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13325, of PRZ Investment Co., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a variance from the use provisions (Section 3104) to use the subject premises as an automobile body repair shop in an R-4 District at the premises 1801 - 12th Street, N.W., (Square 306, Lot 800).

HEARING DATE: September 17, 1980

DECISION DATE: October 1, 1980

FINDINGS OF FACT:

1. The subject site is located on the northeast corner of the intersection of 12th and S Streets and is known as 1801 12th Street, N.W. It is in an R-4 District.

2. The subject site is twenty-five feet wide and ninety-two feet deep. The lot is rectangular in shape and flat.

3. The site is developed with a semi-detached structure occupied by a store front church on the first floor and an apartment on the upper floor. The rear of the premises is developed with a one-story two car garage building of brick construction. The garage doors front on the east side of 12th Street along a driveway. There is a sign on the building advertising the Drummond auto body shop. The site has no parking facilities other than two spaces in the subject garage.

4. To the north of the subject site is an eight foot wide public alley, followed by row and detached dwellings in an R-4 District. To the east of the garage there are the rear yards of row dwellings which front on S Street in the R-4 District. To the south of the garage on the same lot is the aforementioned church and apartments. Across S Street is the Garrison Elementary School in the R-4 District. To the west across 12th Street, a two way traffic street, is the K and D Food market, row dwellings and the 12th Street Christian Church, all in the R-4 District.

5. The subject automobile body repair shop is operated by a lessee of the subject property. The lessee has rented the site for three years without a Certificate of Occupancy. The hours of operation are from 8:00 a.m. to 5:00 p.m., Monday through Friday. There is room for two cars within the garage. The lessee operates the shop by himself. He testified that he does auto-body repair work and some painting. He does no mechanical work. The painting fumes are emitted through the public alley. The applicant testified that there is no noise attached to his work since dents are no longer banged out, but snatched or popped into place.

6. The lessee's witnesses testified that the garage has been in existence for some forty years. The Office of Planning and Development reported that a search of the records disclosed that no Certificate of Occupancy was ever issued for the subject garage or site.

7. The Office of Planning and Development, by report dated August 29, 1980, recommended that the application be denied. The OPD reported that automobile repair shops are not permitted in the subject R-4 District as a matter-of-right or by special exceptions. The OPD reported that Paragraph 8207.11 of the Zoning Regulations lists findings which must be shown by the owner in order to support the grant of a use variance. In summary there must be a showing of hardship upon the owner of the property due to reasons of extraordinary or exceptional conditions or situations of peculiar physical characteristics of the site, as topography, size or shape, and a showing that if approved the variance will not cause substantial detriment to the public good or impair the integrity, purpose and intent of the Zoning Regulations and Maps. The OPD reported that there are no physical characteristics of the garage to distinguish it from that of any accessory two car garage used for residential purposes. The Office of Planning and Development was of the opinion that an auto body repair business is not a use which can exist trustively in a residential neighborhood. It is the nature of this type of use to generate noise, pollution, and traffic which are not expected in R-4 zoned areas. The Board so finds.

8. There were many letters of record in favor of the applicants. Several witnesses appeared at the public hearing in favor of the application. The grounds for approval was that the lessee was a good neighbor, his work was quiet and that it would be economically unfeasible for the applicant to rent elsewhere.

9. The Logan Circle Community Association, by letter of September 12, 1980, opposed the application on the grounds that the lessee has been operating an auto body repair shop at the subject address in violation of the existing zoning. The Association argued that the use for which the variance is requested, auto body repair and painting, is incompatible with the health and welfare of neighboring residents in the R-4 zone. The Association noted that neighboring residents and property owners are opposed to the granting of the requested variance and had asked for the Association's support.

10. Advisory Neighborhood Commission - 1B, by letter of September 12, 1980 and testimony at the public hearing opposed the application on the grounds that the homeowners feel a body shop would destroy the value of their homes. There are no parking sites in the area for a body shop, except for street parking, which would deprive the residents of their parking rights. The ANC argued that a body shop would not improve a residential area, and noted that the garage is an eye sore. The ANC stated that the body shop has no control over fumes which enter nearby buildings and homes and that continuous emission of paint and other toxic fumes are hazardous to the human body. The ANC further alleged that the owner seems to be in violation of D.C. Regulation 74-3, which requires that an auto body repair shop obtain an operating license from the Office of Consumer Protection.

11. There were several letters of record in opposition to the application. Several witnesses appeared at the public hearing. There was a petition of fourteen signatures in opposition. The grounds were the same as listed by the ANC and the Logan Circle Community Association.

12. As to the arguments made both in favor of and opposition to the application, including those stated by the ANC, the Board finds as follows:

- a. The record contains conflicting testimony as to whether the present operation of the subject repair garage has been objectionable. While certain of the immediate neighbors testified that the business has been well operated without apparent adverse effect, other neighbors opposed the application on the likelihood that adverse effects would occur in the future. As noted by the OPD, the Board finds that this is a use which is likely to be objectionable. Further, the property is located in the middle of a residential area. Fumes are vented into an alley, which is adjoined by existing residences.

- b. The economic difficulties faced by the operator in renting space elsewhere is not a basis for granting a variance. There must be some characteristic inherent in the property which creates some undue hardship for the owner.
- c. The Board agrees that an automobile body repair shop is a use which is fundamentally incompatible with a residential neighborhood.
- d. The ANC's argument as to the licensing of the body shop is not material to the consideration of this application before the Board. Other bodies have responsibility for enforcing the Consumer Protection Regulations.

13. There is no evidence in the record to suggest that the property is exceptionally narrow or shallow or is affected by some exceptional topographical condition or other extraordinary or exceptional condition.

14. The owner of the building did not cite to the Board any hardship which he would incur if the application were denied and the Zoning Regulations were strictly applied.

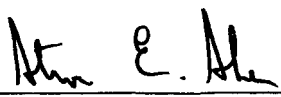
CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a variance from the use provisions, the granting of which requires a showing of a hardship that is inherent in the property itself. The Board concludes that there is no such hardship. The lot is rectangular in shape and level. As found in the OPD report, the site could be used for a purpose for which it is zoned. An economic hardship is not grounds on which a use variance could be granted. The Board notes the strong opposition to the application in the community and finds it persuasive. The Board is of the opinion that while the subject property was operated illegally, it was not done through maliciousness, but inadvertence. In view of the reasons for the strong opposition, the Board further concludes that the application cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Charles R. Norris, Connie Fortune, Theodore F. Mariani
William F. McIntosh and Leonard L. McCants to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

30 DEC 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION
OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER
HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE
AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."